Appendix

STATEMENTS OF RESPONDENT IN REGARD TO THE FACTS

1. Respondent asserts in page 2 of his brief that West Coast Terminals (the stevedore company) by agreement with Pacific Far East Line furnished longshoremen to load the steamship FLEETWOOD after first stating that John Williams, a longshoreman, was employed by West Coast Terminals. The latter statement is correct; but there is no evidence whatsoever that the stevedore company, pursuant to any agreement, furnished longshoremen to Pacific Far East Line. There was never any question in the case that an independent stevedore company did the loading of the vessel. This is evidenced by the following instruction given by the trial court to the jury:

> "You are instructed that the actual loading operations of the vessel were being done by the stevedoring company, the West Coast Terminals, Inc., and their employees, the longshoremen. If the defendant's duty to furnish a seaworthy vessel, together with seaworthy equipment and appliances, and its duty to provide a reasonably safe place to work, has been fulfilled, and thereafter, without the knowledge of the ship operator, the stevedores negligently or improperly used, handled or rigged such equipment and appliances, the ship operator, the defendant in this case, is not liable for the consequences."

And the evidence amply justifies such an instruction.

2. The assertion that "there is no evidence as to where his [Williams'] partner went" is contrary to uncontradicted evidence of the winch driver who was in an excellent position in which to observe. Immediately after Williams fell he testified that he saw Williams' partner standing to his left "on the offshore side of the place where you had removed the plug" (R. 315).

3. Respondent states that the overhead (ceiling) lights in the hold "throw light up on the ladder." There is no reference to any testimony to that effect and there could be none. The night mate testified in part as follows (R. 120):

> "Q. (By Mr. Chandler): The lights I am referring to, I am sorry, the lights I am referring to are the lights down in the holds, these lights we have been talking about.
>
> A. There are lights down in the hold. They don't need them until they get the hatch off, and come down to go to work. They wouldn't help them a bit to take the hatches off."

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(R. 121):

> "Q. (By Mr. Chandler): Have you observed, have you ever observed the lights down in the holds here providing light up on these steps when the key plug is removed?
>
> A. No, I can't say that I have seen that, no, whether they shine up there or not, I don't—wouldn't be able to say that. I don't—I don't see how—they can't shine up too much anyhow."

Another witness testified that he made personal observations on the same ship with the ceiling lights on and off and could see no difference in the amount of light on the coaming in either case (R. 331). Furthermore, from a purely physical standpoint, the light could not be cast where Williams would step or was about to step in climbing down because any light reflected from below would come from underneath the steps and not from the top.

Respondent further states that these hold lights "were not turned on." While there is evidence in the record that the hold lights were not burning at the time of the accident, there is no substantial evidence that they were not "turned

on." It does not appear in the record what was the cause of the failure of the hold lights to be illuminated at the time of the accident. While the night mate who was on duty after midnight of the night in question testified that he did not order those lights to be turned on at 1 o'clock, there was no testimony in the record that the lights had been turned off at midnight. On the contrary the night mate who was on duty until midnight testified that he did not order those ceiling lights turned off at midnight and, in fact, that those lights are not ordinarily ever turned off when the vessel is in port.

4. Respondent asserts that the cargo lights in question were "uninsulated." There is no evidence in the record that those lights, or any part thereof, were uninsulated. Indeed the sole attempt to elicit testimony bearing on this point resulted in testimony that the lights could be held in the operator's bare hands without his being burned (R. 179). All other testimony concerning the holding of these lights in the hands of longshoremen for the purpose of directing the lights where desired was that it could be and often was done (R. 99, 159, 166, 272, 273). Furthermore, there was uncontradicted evidence that longshoremen working in freeze hatches such as the one in question wore heavy gloves (R. 189). Significantly, there was also uncontradicted testimony that one of the lights was picked up by one of the longshoremen immediately after the mishap and shone down into the hold (R. 129, 138, 139).

5. Respondent asserts that the cargo lights could not be lashed to the guardrail which runs across the forward edge of the hold because there is "an ever present danger that it may be smashed by a swinging plug if this is done." While there is evidence in the record that the lights might be damaged if they were hung on the inshore end of that

rail, there was uncontradicted evidence that the lights could be lashed on the offshore end of the railing without being smashed and that this was commonly done (R. 163, 181, 190, 273, 281). Furthermore, there was uncontradicted evidence that such a light could be hung even on the inshore end of the guardrail if it were lashed on the forward side thereof in such a manner as not to project out into the possible path of the plugs as they were being moved to one side (R. 188).

6. Respondent states that it "would be almost impossible to hold" a cargo light in such fashion as to give effective light and not run into real danger of temporarily blinding one of the "constantly moving longshoremen * * * or the winch driver." There is no such testimony. In fact there is no testimony that it would be even difficult to make effective use of the cargo lights, particularly if such a light were handled by a longshoreman. The testimony is uncontradicted that longshoremen often did just that; and as indicated above, that was done immediately after the mishap. Obviously, if one looks directly into a powerful light his vision would be interfered with for a time. That would be true of any light, including the masthead light which is used when there is no Seattle tent. And there is no necessity whatsoever to look into the light if hung or used in a proper manner. Necessarily, when the two men were hooking on to the plugs they would be looking down and there would be no occasion to look at the light at any time, including the time Williams was climbing into the area when his head would be above the light, or at most, on a level with it.